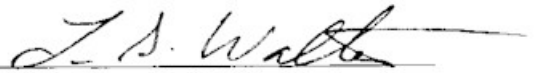


This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: November 14, 2006


Lawrence S. Walter
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

In re: EUGENE R. HECKENKAMP,

Debtor

Case No. 05-37538

Judge L. S. Walter
Chapter 7

ORDER DENYING OBJECTION TO CLAIM

This matter is before the court upon the *Objection to Allowance of Claims of Creditors* [doc. 17] (“Objection to Claim”) filed by the Debtor and the response thereto of Miami Valley Hospital (“MVH”) [doc. 19]. The Debtor objects to the proof of claim of MVH, Claim No. 6, in the amount of \$155,470.54. The court conducted a hearing on November 7, 2006 and, having reviewed the pleadings and exhibits and considered the testimony of witnesses and other evidence, the court finds the Objection to Claim to be unfounded and hereby denies same as more fully set forth below.

Debtor generally denies liability to MVH for services rendered to his deceased wife, Kathy I. Heckenkamp because he had no contractual or adjudicated obligation to pay for her expenses.¹ The services rendered to Mrs. Heckenkamp related to her final illness and the charges amounted to \$97,359.92 plus interest and costs. Debtor makes several tangential arguments, none of which have any merit. First, Debtor argues that he sent three checks to MVH which were returned to him as “overpayments.” According to uncontroverted testimony, these payments were for discreet accounts unrelated to the accounts represented in the disputed proof of claim. Debtor also argues that Mrs. Heckenkamp had her own income and paid her own medical expenses to the extent she was able and that Mr. Heckenkamp assisted with these payments including making payments to the extent he was able following her death. It is unclear why Debtor believes these facts relieve Mr. Heckenkamp from any further legal obligation for his deceased wife’s medical expenses. It may be that Debtor believes that such facts make the early case of *Tille v. Finley*, 126 Ohio St. 578 (1933) applicable. But that case, which did not involve a deceased spouse, was distinguished and largely limited to its facts by the later decision in *Ohio State Univ. Hosp. v. Kinkaid*, 48 Ohio St. 78 (1990). Debtor has cited no other relevant legal authority and the court is not aware of any such authority.

The real issue in this case is the applicability of O.R.C. § 3103.03 in the context of a spouse’s last illness and resulting penniless estate. Revised Code § 3103.03 provides in relevant part:

(A) Each married person must support the person’s self and spouse out of the person’s property or by the person’s labor. If a married person is unable to do so, the spouse of the married person must assist in the support so far as the spouse is able. The biological or adoptive parent of a minor child must support the parent’s minor children out of the parent’s property or by the parent’s labor.

* * *

¹ A portion of the claim relates to medical services provided to the Debtor rather than his wife. Debtor provides no basis for objecting to expenses he incurred on his own behalf and admitted his liability for that portion of the claim at the hearing.

(C) If a married person neglects to support the person's spouse in accordance with this section, any other person, in good faith, may supply the spouse with necessities for the support of the spouse and recover the reasonable value of the necessities supplied from the married person who neglected to support the spouse unless the spouse abandons that person without cause.

R.C. § 3013.03. The Supreme Court of Ohio has held that the terms of R.C. § 3103.03 are clear, and pursuant to the statute a spouse must aid in the support of the other spouse to the extent he or she is able. *Kinkaid*, 48 Ohio St. at 78. Like the *Kinkaid* case, the *Oleksik* case involved a surviving spouse's obligation to pay the medical expenses incurred during the other spouse's last illness: "[C]ommon sense, elementary fairness and a simple understanding of the federal and state court opinions on this question would dictate that the wife of a decedent is responsible for her husband's necessities at his last illness if his estate is not able to pay, irrespective of the provisions of R.C. 3103.03 and 3103.05" *Cleveland Metro. Gen. Hosp. v. Oleksik*, 38 Ohio App.3d 21, 22-23 (1987). *See also*, *Warren Gen. Hosp. v. Brink*, 80 Ohio App.3d 793, 797 (1992); *Smith v. Snapp*, 16 Ohio Op.2d 304 (1961) (wife liable for the funeral expenses and those incurred during her husband's last illness even where she has not directly contracted for them, and the Court will so hold, where the husband has no estate).

Given the unequivocal nature of Ohio law on these issues, and the evidence and testimony presented at the trial of this matter, there can be no doubt that the Debtor in this case has an absolute obligation to pay the medical expenses of his deceased spouse, tempered only by the statutory limitation, "so far as the spouse is able." According to the *Kinkaid* court, the determination as to a spouse's ability to assist in payment of such expenses is "within the sound discretion of the trial court." *Kinkaid*, 48 Ohio St. at 80. In this instance, however, the extent of the Debtor's ability to pay these expenses will be definitively determined by virtue of this chapter 7 bankruptcy proceeding. His non-exempt assets will be applied pro rata to pay his

creditors' claims, including that of MVH, and he will discharge the balance of those claims that he is unable to pay.

Consequently, it is the determination of this court that the claim of MVH in the total amount of \$155,470.54 (inclusive of interest and costs) is an allowed claim. The Objection to Claim filed by the Debtor is hereby **OVERRULED**.

SO ORDERED.

cc: Mary K. Soter, 5518 N. Main St., Dayton, OH 45415-3455
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United States Trustee, 170 N. High St., Suite 200, Columbus, OH 43215-2417

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